

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

VILLAGE OF BUTLER (POLICE DEPARTMENT)
and DRIVERS, SALESMEN, WAREHOUSEMEN,
MILK PROCESSORS, CANNERY, DAIRY
EMPLOYEES AND HELPERS UNION LOCAL
NO. 695

Case VII
No. 23717 ME-1602
Decision No. 16844

For Clarification of a Bargaining
Unit Consisting of Certain Employees of

VILLAGE OF BUTLER (POLICE DEPARTMENT)

FINDINGS OF FACT, CONCLUSION OF LAW AND
ORDER CLARIFYING BARGAINING UNIT

The Village of Butler and Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, having on November 8, 1978 jointly requested the Wisconsin Employment Relations Commission to determine whether the position of Police Sergeant should be, or should not be, included in an existing voluntarily recognized unit consisting of non-supervisory police personnel in the employ of the Police Department of the Village of Butler; and a hearing having been held in the matter on December 7, 1978 before Stuart S. Mukamal, Hearing Officer, and during the course of the hearing both the Village and the Union having been afforded the opportunity to present evidence and arguments with respect to the issue; and the Commission, having reviewed the evidence and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That the Village of Butler, hereinafter referred to as the Village, has offices at 12621 Hampton Avenue, Butler, Wisconsin.
2. That Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union, Local 695, hereinafter referred to as the Union, has its offices at 1314 North Stoughton Road, Madison, Wisconsin.
3. That at all times material herein, and at least since 1973, the Village has voluntarily recognized the Union as the exclusive collective bargaining representative of employees in a unit consisting of "all employees of the Police Department, except the Chief of Police, Police clerical and meter persons"; that the instant proceeding was initiated at the mutual request of the parties to determine whether the position of Police Sergeant should, or should not be, excluded from said collective bargaining unit; and that in said regard the Village would exclude the occupant of said position, Gary Hurlebaus, from said unit on the claim that Hurlebaus is a supervisor within the meaning of the Municipal Employment Relations Act, while the Union contends otherwise.
4. That the position of Sergeant did exist at one time, and was formerly occupied by Marlyn Fisher; that Fisher was promoted to the Chief's position at about the end of 1973, and as a result the Sergeant position remained vacant under circumstances suggesting that the Village

did not intend to fill the position at that time; and that on May 16, 1978 the Village determined to fill the position of Sergeant, and that Hurlebaus, who had been a Police Patrolman, was promoted to the position of Sergeant on May 21, 1978.

5. That the Police Department, in addition to clerical and meter persons, consists of eight members: the Police Chief, one Sergeant, one Patrol Officer/Investigator, four Patrol Officers and one Crossing Guard; that Hurlebaus, as Sergeant, is the second-in-command of the force, and acts as Chief in the Chief's absence. The Department operates four shifts: (1) the day shift, from 7:30 a.m. until 3:30 p.m. with the Chief and the Officer/Investigator on duty, (2) the second shift, from 3:30 p.m. until 11:30 p.m. with two officers on duty, (3) the third shift, from 11:30 p.m. until 7:30 a.m., also with two Officers on duty and (4) the fourth shift, from 7:15 p.m. until 3:30 a.m., overlapping the second and third shifts, normally worked by Hurlebaus; and that although Hurlebaus is directly responsible to the Police Chief and his duty is to assist the Chief in the administration of the Department, much of his day-to-day work is performed independently of the Chief's direct supervision, inasmuch as his shift does not overlap with that of the Chief's.

6. That although Mr. Hurlebaus spends several hours during each shift performing patrol and investigative duties similar to those performed by members of the bargaining unit, his position is vested with a significant degree of supervisory authority; that Hurlebaus is effectively in charge of the second and third shifts and directs the work of the Patrol Officers assigned to work on those shifts; that in said regard, (1) he makes out the work schedule for Patrol Officers and other Department employees, (2) he can grant or require overtime in the event of a manpower shortage, and (3) he also holds the power to approve or deny requests for time off, vacation or holiday leave; and that Hurlebaus' authority to determine shift schedules is, however, limited by a provision of the current collective bargaining agreement, which grants to Patrol Officers the right to indicate shift preferences in order of seniority, and in practical terms, the result has been that senior Officers can choose their own regular shifts and Hurlebaus sets the shifts of junior Officers.

7. That Hurlebaus is responsible for the ongoing observation and evaluation of night shift Patrol Officers; that he spends several hours on each shift assisting and watching the performance of Patrol Officers on the street and additional time reviewing their daily reports, and may on his own, demand written reports from Officers in the event that particular circumstances arise calling for an explanation of their conduct, and on one specific occasion has done so; that Hurlebaus also is in charge of the various training programs instituted by the Department for its Officers and has been instrumental in the formulation of a weapons training program in cooperation with the Brookfield Police Department; and that he has assigned one of the Patrol Officers to assist him in administering this program, has evaluated the performance of Officers at weapons schools, and has made recommendations to the Chief as to further training for particular Officers as needed.

8. That Hurlebaus has limited authority to assess discipline against Patrol Officers; that he can issue written reprimands and can suspend an Officer for up to one day without obtaining further approval, although the record is unclear as to whether he may suspend for any cause warranting suspension or solely for certain specified causes such as intoxication on duty, and that he does not possess the authority to assess any greater penalty; that, however, he may be called upon to investigate complaints lodged against Officers and to recommend an appropriate penalty in such cases, and in that regard in one instance since his elevation to Sergeant, in which discipline stemming from an infraction occurring during that period was imposed upon an Officer, Hurlebaus, at the Chief's

direction, conducted an investigation, and prepared a written report for the Chief, including a recommendation of suspension, which recommendation was accepted by the Chief; and that although Hurlebaus' authority to impose sanctions is therefore quite restricted, he has been instrumental in evaluating the one case involving an allegedly serious breach of discipline and in performing his role, Hurlebaus exercised a considerable degree of independent judgment.

9. That Hurlebaus has not played a significant role in the two hiring decisions that have been made by the Department since his elevation to Sergeant; that in one instance, he was contacted by a former Officer who had returned to the area, who had inquired as to the possibility of being rehired; that Hurlebaus thereupon contacted the Village's Fire and Police Commissioner and advised him of the situation; that said individual was rehired, it cannot be said that Hurlebaus' recommendation was instrumental in effectuating the result; and that in the second instance, Hurlebaus played no part in a decision to hire an Officer approximately one month after he became Sergeant.

10. That Hurlebaus is called upon by Patrol Officers, on occasion, to resolve problems as they arise, but the Sergeant is not referred to at any step of the contractual grievance procedure, not has Hurlebaus handled any formal grievances.

11. That Hurlebaus acts as Chief of the Department in the absence of Chief Fisher and must coordinate his schedule so as to be on duty during the Chief's absence; that as Acting Chief, Hurlebaus possesses all powers vested in the Chief, with the exception of the power to impose discipline; and that the Chief is either on vacation or off duty for well over 100 days out of the year, during which Hurlebaus acts as Chief; that Hurlebaus, as Police Sergeant, earned a salary of \$1,458.33 per month in 1978; and that the range for Patrol Officers' salaries in 1978 was from \$1,069 to \$1,293 per month.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

That the position of police Sergeant in the Police Department of the Village of Butler, is a supervisory position within the meaning of Section 111.70(1)(c)1 of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

IT IS HEREBY ORDERED that the position of Police Sergeant in the Police Department of the Village of Butler is hereby excluded from the bargaining unit of police personnel of the Village of Butler, which unit is presently represented by Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union, Local 695.

Given under our hands and seal at the City of Madison, Wisconsin this 16th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW, AND ORDER CLARIFYING BARGAINING UNIT

Pursuant to the letter of Trustee Richard A. Ensslin, dated November 6, 1978, the parties have mutually agreed to seek clarification of the issue as to whether the position of Police Sergeant is properly included within the bargaining unit of police officers currently represented by the Union. The Union seeks such inclusion, while the Village contends that the position of Police Sergeant is supervisory and therefore that it ought to be excluded from the unit.

Section 111.70(1)(o)1 of the Municipal Employment Relations Act defines the term "supervisor" as follows:

As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In order to determine whether an individual in question satisfies the statutory criteria to a degree sufficient to warrant the conclusion that he or she in question is a supervisor, the Commission considers the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees. 1/

With regard to the above criteria, the Commission has stated that:

It is not necessary that all of those factors be present in order to find an employee to be a supervisor, but rather it is necessary that those factors should appear in sufficient combination to clearly establish that the employee is a supervisor. 2/

1/ Fond du Lac County (Sheriff's Department) (14669) 5/76, Fond du Lac County (10579) 1/72.

2/ City of Platteville (Police Department) (15535) 5/77, Village of Chenegra (13653) 5/75.

From the record as a whole, it is clear that the position of Police Sergeant was intended to possess, and does in fact possess, a considerable degree of authority over members of the Department. The Sergeant is the ranking officer present during both night shifts during which the Chief is not normally on duty. He also acts as Chief during considerable periods when the Chief is off duty. He is primarily responsible for scheduling, observing and evaluating Patrol Officers, although he will consult the Chief regarding any problems of a serious nature that may arise. He has authority to impose a limited degree of discipline, and in instances where more serious discipline may be warranted, he will often be called on to investigate the matter and to make recommendations that will carry significant weight. The Village relies heavily upon the Sergeant to assist the Chief in administering the Department, directing its work force and in taking charge when the Chief is unavailable. The Sergeant spends less than half of his time on patrol duties, and is only very infrequently called upon to devote his entire shift to such duties since second and third shifts are usually covered by one or more Patrol Officers. In this regard, it is significant that the Chief is also required to perform patrol from time to time as needed during the day shift. Under the particular circumstances prevailing here, the supervisory aspects of the Sergeant's position are of great importance, and are reflected by the differential between the salary paid to the Sergeant and that paid to Patrol Officers.

Chief Fisher was a member of the bargaining unit during his tenure as Sergeant prior to his becoming Chief. However, the position as it then existed was considerably different in nature than the current position. The former Sergeant's position was a de facto Patrol Officer who was recognized for his longevity and experience, but who possessed no authority over his fellow Patrol Officers and who spent substantially all of his time on patrol duties. The Sergeant at that time did not even assume the duties of the Chief in the Chief's absence; the role of Acting Chief was rotated among the Patrol Officers (including the Sergeant).

Hurlebaus does not possess certain of the commonly recognized indicia of supervisory authority, particularly in the areas of adjustment of grievances, imposition of the more severe degrees of discipline and input into Departmental hiring decisions. We are also aware that to conclude that Hurlebaus is a supervisor would create a rather high ratio of 1:3 of supervisory to non-supervisory personnel within the Department. Nevertheless, given the circumstances present herein, and noting in particular the considerable measure of authority exercised by Hurlebaus over the Patrol Officers, especially during the considerable absence of the Chief, the Commission concludes that the Police Sergeant is a "supervisor" within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act 3/ and is therefore appropriately excluded from the bargaining unit.

Dated at Madison, Wisconsin this 16th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Herman Torosian, Commissioner

Marshall L. Gratz, Commissioner

3/ Cf. City of LaCrosse (14019) 10/75, City of Greenfield (14393) 4/76.